



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	State Water Control Board
VAC Chapter Number:	9 VAC 25-760
Regulation Title:	James River (Richmond Regional West) Surface Water Management Area (SWMA)
Action Title:	Designation of the James River (Richmond Regional West) SWMA
Date:	June 20, 2001

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose*

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of a surface water management area is to provide for the protection of beneficial uses of designated waters of the Commonwealth during periods of drought by managing the supply of surface water. The proposed regulatory action is to designate the James River near Richmond as the James River (Richmond Regional West) Surface Water Management Area (SWMA). The area encompasses the James River upstream from the southeastern toe of the I-95 Bridge in the City of Richmond to the southwestern toe of the U.S. Route 522 Bridge in Goochland and Powhatan Counties.

The James River has been designated a Scenic River for its aesthetic, cultural, and recreational opportunities. It serves as the sole source of water supply for residents and several industrial facilities in the City of Richmond and major portions of Chesterfield, Henrico, Goochland, and Hanover Counties. The River also boasts an exceptional habitat for anadromous fish and aquatic life, including the American Shad.

After the area has been declared a SWMA by regulation, there can be no withdrawal of more than 300,000 gallons of surface water in any single month (except for exempted withdrawals or withdrawals made pursuant to an approved voluntary agreement) without a surface withdrawal permit or certificate issued by the State Water Control Board (Board). Persons withdrawing such water must also prepare and abide by a water conservation and management plan. Conditions for withdrawal (in effect only during periods of low flow) may include water withdrawal limitations, monitoring requirements, and instream flow requirements.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

The basis for the proposed regulation is Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 of the Code of Virginia. Specifically, § 62.1-246 authorizes the Board to declare surface water management areas, § 62.1-247 authorizes the Board to issue surface water withdrawal permits, §§ 62.1-248 and 249 establish permit requirements. Further, §§ 62.1-251 and 252 authorizes the Board to enforce provisions of the Chapter.

Note: The full text of legal authority can be found at the following web site:

<http://www.vipnet.org/vipnet/government/code-of-virginia.html>

or

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+62.1-242>

Need*

Please detail the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

Surface water management areas are needed where low flow conditions threaten, or could threaten, beneficial stream uses.

The James River near Richmond supports a number of important existing instream and offstream uses. Among these uses are domestic water supply, municipal and industrial water supply, recreation, and support for various aquatic life. The James River near Richmond also has aesthetic and cultural importance. During periods of low flow, there is increasing competition among users and as development increase in the area this competition will also increase. Designation of the area as a Surface Water Management Area will provide a coordinated approach in managing the limited water resources during periods of low flow.

Among the issues that will be addressed during the designation process are boundaries of the SWMA, voluntary agreements among the withdrawers, flow levels that will trigger permit conditions, and classification of water uses.

Substance*

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed.

The proposed regulation will define the boundaries of the James River (Richmond Regional West) Surface Water Management Area and establish the flow level at which permit conditions will be in effect. Once designated, any surface water withdrawal within the area of more than 300,000 gallons in any one month must have a permit or certificate to withdraw, unless they are exempted by law, or they are parties to an approved voluntary agreement. All withdrawers will also be required to develop and implement a water conservation and management plan.

Conditions that may be imposed on the withdrawals are limitation on the volume and flow rate at which water may be withdrawn at certain times and monitoring and reporting requirements.

Alternatives*

Please describe the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the proposal that have been considered and will be considered to meet the need, and the reasoning by which the agency has rejected any of the alternatives considered.

Alternative 1: Designate the James River near Richmond as SWMA.

The SWMA regulation states that SWMA proceedings may be initiated by the Board upon its own motion or upon the request of a municipality within the proposed area or another state agency. The Henrico Board of Supervisors petitioned the Board to initiate the SWMA proceedings for the James River near Richmond. Because of the competing instream and offstream uses of water in the James River, the Department of Environmental Quality (DEQ) agrees that proceedings should be initiated to determine whether or not the criteria for designation are present. If the area meets the criteria for designation, the preferred alternative for managing the water resource is to designate the area as a surface water management area.

Alternative 2: Promote a non-regulatory voluntary agreement between water users.

The County of Henrico and the City of Richmond have prepared a draft River Management Plan (RMP) which outlines a river water withdrawal schedule. The schedule is tiered and becomes more stringent as river flow levels decrease in order to reduce water withdrawals during low flow conditions. The limitations include reduced and/or modulated withdrawals for the City of Richmond canals and voluntary along with mandatory water conservation measures for drinking water supply users. This plan only involves water

withdrawals by the City of Richmond and Henrico County. Under this alternative, DEQ will have no regulatory authority to enforce the RMP and to review and provide input on any voluntary agreements that may be formed. The SWMA designation will provide the regulatory authority needed to enforce the RMP and will require water conservation of other users.

Alternative 3: Promote voluntary water conservation and reduced withdrawals.

Under this alternative, the DEQ could promote voluntary water conservation and reduced withdrawals during periods of moderate to severe low flow. During extreme drought conditions, the Governor can declare an emergency at the request of local governments and institute mandatory water use restrictions. Although this alternative would minimize mandated water withdrawal reductions, it would be reactive and voluntary conservation measures may not be sufficient to protect aquatic habitat in the river. This alternative does not promote long-term, proactive water conservation programs.

Public Participation*

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate where information on the public meeting (i.e., date, time and place) may be found.

The Board is seeking comments on the intended regulatory action, including (i) ideas to assist in the development of a proposal, (ii) the costs and benefits of the alternatives stated in this notice or other alternatives and (iii) impacts of the regulation on farm or forest lands. Anyone wishing to submit written comments for the public comment file may do so at the public meeting, by mail, or by email to Erlinda Patron, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, (804) 698-4047, fax (804) 698-4032 or elpatron@deq.state.va.us. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the close of the comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory Approach*

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board is using the participatory approach to develop the SWMA proposal. In 1993, the Board published a Notice of Intended Regulatory Action (NOIRA) to designate the James River near Richmond as a SWMA. A public meeting was held and a Technical Advisory Committee (TAC) of interested parties and stakeholders was convened. The TAC has subsequently met on eight occasions, with the most recent meeting conducted in June 1999.

In June 1998, Governor James Gilmore signed Executive order No. 25, "Development and Review of Regulations Proposed by State Agencies." The scheduling requirements of Executive Order No. 25 necessitated the reissuance of the NOIRA on the proposed SWMA regulatory proceedings for the James River near Richmond.

The Board is seeking comments on whether or not to use the same TAC for the remainder of the regulatory process or to form a new TAC.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposal to designate the James River near Richmond as a surface water management area should have no adverse impact on family formation, stability, and autonomy. However, it could affect the water usage of families using water purchased from the City of Richmond (including Chesterfield and Hanover Counties) and Henrico County (including Goochland County). If the James River is designated as a SWMA, these localities will be required to institute water conservation measures, including ordinances prohibiting the general waste of water, and providing for mandatory water use restrictions, with penalties, during water shortage emergencies.

The SWMA designation will have a positive impact on families living in the area by protecting the quality and quantity of their water supply sources. In addition, families who enjoy the recreational activities associated with the James River (boating, swimming, fishing, etc.) will also benefit because minimum instream flows will be maintained and fish habitat will be protected by the SWMA designation.